C.F. 200/-

Division Bench (3)

# IN THE HIGH COURT OF JUDICATURE AT BILASPUR CHHATTISGARH

## WRIT PETITION NO. 2472 OF 2005

**PETITIONERS :**

1. Jindal Steel & Power Limited, A Company Registered under the Companies Act, 1956, having its registered office at Delhi Road, Hisar (Haryana).

   Factory At : Kharsia Road, Raigarh (C.G.).

2. Jindal Opencast Coalmines, Dongamouha, District Raigarh (C.G.).

P.R. No. 2350/05
Presented by Shri Sameer Behar
dated 13/6/05

Versus

**RESPONDENTS :**

1. Union of India, represented by the Secretary, Ministry of Finance (Department of Revenue), North Block, New Delhi – 110 001.

2. The Commissioner of Central Excise & Customs, Central Revenue Building, Raipur (Chhattisgarh).

## WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

R/C Office clerk to Shri R.S. Baghel for UOI 13.6.05

The petitioners, above named, most respectfully submit as under :

### 1. PARTICULARS OF THE PETITIONERS.

As shown in the cause title.

(39)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.No. 2472/2005 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
|---|---|---|

**Division Bench:**
**HON'BLE SHRI A.K. PATNAIK, C.J.**
**& HON'BLE SHRI SUNIL KUMAR SINHA, J.**

**13-07-2005**

Mr. Prashant Mishra, Sr. Advocate with Mr. V.R. Tiwari, learned counsel for the petitioners.

Thakur Vijay Singh, learned Assistant Solicitor General for Union of India / respondents.

Heard.

In this writ petition, the petitioner has challenged the provisions of Rule 2(1)(d)(v) of the Service Tax Rules, 1994 as ultra vires the provisions of Finance Act, 1994 on the ground that the said rule imposes service tax on the petitioner who does not provide transport service but is recipient of transport service. In the case of **Gujarat Ambuja Cement & Another vs. Union of India & Another**, reported in **(2005) 4 SCC 214**, the Supreme Court has inter alia held that the provisions amending Section 65(6) of the Finance Act, 1994 to treat the recipients of the services as assessees only in case of services rendered by goods transport operators and clearing & forwarding agents are valid and are not hit by Articles 14 and 265 of Constitution of India. From the said judgment, it appears that by virtue of the amendments effected in Section 65(5) and 66(3) of the Finance Act, 1994 by Section 116 of the Finance Act, 2000 as far as the services provided by clearing & forwarding agents and goods transport operators are concerned, the liability to pay the tax is not on the person providing the taxable service but on the person who pays for the services. Hence, Rule 2(1)(d)(v) of the Service Tax Rules, 1994 is in consonance with the said

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक** W.P.No.2472/2005 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश — 2 — | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
|---|---|---|
| | amended provisions of the Finance Act, 1994 which have been held to be valid.<br><br>The writ petition is accordingly dismissed.<br><br>In view of the above, M.(W).P. No.2003 of 2005 and I.A.No.4889 of 2005 stand disposed of.<br><br>Sd/-<br>Chief Justice<br>Judge<br><br>Sd/-<br>Sunil Kumar Sinha<br>Judge | |